IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.140 OF 2007

Mahendra N.Thakkar .. Petitioner

vs

Jayesh M.Gandhi & ors .. Respondents

Mr.Mahendra Shah i/b Komana & Co for Petitioner
Mr.Paritosh Jaiswal a/w Mr.Dipen Desai i/b Kanga & Co for Respondent nos. 1 to 3.
Mr.N.C.Parekh i.b Mansukhlal Hiralal & Co for Respt no.4

CORAM : ANOOP V.MOHTA, J

DATE : 3rd May, 2007

P.C.

1. The petitioner has invoked section 9 of the Arbitration and Conciliation Act (Arbitration Act, 1996) being a party to the partnership deed.

2. Based on partnership deed, an Arbitral Tribunal is constituted of a sole Arbitrator and before the same Arbitrator proceedings are going. On 16th December 2004 and 8th September, 2005 parties have agreed for interim arrangement and accordingly consent terms have been filed. The partnership business is running accordingly.

3. Following is the important clause appearing in the partnership deed which is the bone of contention in the present petition:

12 (b).

Every partner shall retire from the firm at the end of the firm's financial year in which he attains the age of 65.

4. Admittedly, the petitioner has attained the age of 65 as on 31st March, 2007 and therefore based on clause 12 (b) as per this agreement, the petitioner stands retired. Learned counsel appearing for the petitioner however, is disputing the said interpretation based on clause 2 as referred above.

5. Admittedly, there is no reply filed by the respondents in the petition. The petitioner's apprehension as regards the advertisement and notices of retirement has become infructuous as the respondents had already published and advertised accordingly prior to the filing of the present petition. Having once published, the submission that hereinafter they should not publish the said notice again is difficult to accept.

6. However, as regards the main prayer clause (a) whereby the petitioner has sought injunction order against the respondents from restraining the petitioner from acting as partner based on those orders of this court, at this stage of proceedings,in view of clause 12 (b) as reproduced above, I am not inclined to grant any relief as

prayed. I am not expressing any opinion on those terms as disputed by the partners.

7. There is no case made out in the facts and circumstances of the case in view of the averments made and also in view of the facts as reflected in the petition and basically in view of clause 12 (b).

8. Unless it is decided, at this stage, prima facie the clause itself reflects that the petitioner ceases to be the partner of the firm, as he has attained the age of 65.

9. Considering the submissions raised and keeping all points open, I am of the view that the tribunal which is already constituted by some other partner arising out of the same partnership deed as consented, by both the parties, the present issues and disputes as raised in the petition also referred to the same Arbitrator. All points are kept open including the interpretation of the clauses in the partnership deed in question.

10. In view of this, present petition is disposed of. No order as to costs.

(Anoop V.Mohta, J)